



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2020-0613; FRL-8928-02-R2]

#### **Approval and Promulgation of Implementation Plans; New Jersey and New York; 1997 Ozone Attainment Demonstrations for the NY-NJ-CT Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving revisions to the ozone attainment portions of the State Implementation Plan (SIP) submitted by the states of New Jersey and New York to meet the Clean Air Act (CAA) requirements for attaining the 1997 8-hour ozone national ambient air quality standard (NAAQS). Specifically, the EPA is approving New Jersey's and New York's demonstrations of attainment of the 1997 8-hour ozone NAAQS for their portions of the New York-Northern New Jersey-Long Island NY-NJ-CT Moderate 1997 8-hour ozone nonattainment area (hereafter, the NY-NJ-CT area or the NY-NJ-CT nonattainment area). This action is being taken under the Clean Air Act.

**DATES:** This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2020-0613. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

**FOR FURTHER INFORMATION, CONTACT:** Omar Hammad, Air Planning Section,  
Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-  
1866, (212) 637-3347.

## **SUPPLEMENTARY INFORMATION:**

The Supplementary Information section is arranged as follows:

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- II. Summary of action and comments received
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### **I. Background and purpose**

On June 21, 2021 (86 FR 32363) and June 24, 2021 (86 FR 33154)<sup>1</sup> the Environmental Protection Agency (EPA) published a Notice of Proposed Rulemaking (NPRM) for New Jersey and New York. In that proposed rulemaking action, the EPA proposed to approve a portion of New Jersey's and New York's SIP revision submitted on January 2, 2018 and November 13, 2017 respectively, for attainment of the 1997 84 parts per billion (ppb) 8-hour ozone National Ambient Air Quality Standards (NAAQS). New Jersey and New York previously submitted attainment demonstrations for the 1997 84 ppb 8-hour ozone standard which were approved by the EPA. 78 FR 9596 (February 11, 2013). On June 18, 2012, the EPA issued a Clean Data Determination (CDD) for the 1997 84 ppb 8-hour ozone standard for the NY-NJ-CT area based on the attainment demonstrations submitted by the two States. 77 FR 36163 (March 26, 2012). However, on May 4, 2016, EPA rescinded the CDD since the EPA determined that areas within the NY-NJ-CT area exceeded the 1997 84 ppb standard based on 2010-2012 monitoring data. 81 FR 26697 (May 4, 2016). The EPA simultaneously issued a SIP Call for the affected states within the nonattainment area to address the 1997 84 ppb 8-hour ozone standard. The SIP

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<sup>1</sup> The proposed rule was published twice due to a clerical error.

revisions submitted by New Jersey and New York address the attainment demonstration requirements of the May 4, 2016 SIP Call. The EPA's review of this material indicates that ambient air quality monitors within the NY-NJ-CT area are attaining the 1997 ozone NAAQS.

## **II. Summary of action and comments received**

As discussed in the proposed rule at 86 FR 32363, June 21, 2021, and at 86 FR 33154, June 24, 2021, the EPA reviewed the photochemical grid modeling used by New Jersey and New York in their SIP submittal to demonstrate attainment of the 1997 ozone NAAQS and determined that the modeling meets the EPA's guidelines and is acceptable to the EPA. Air quality monitoring data for 2014-2016 and certified data for 2017, 2018 and 2019 in the NY-NJ-CT area and the subsequent design values for 2015-2017, 2016-2018 and 2017-2019 also demonstrate attainment of the 1997 8-hour ozone standard throughout the NY-NJ-CT area. The purpose of the attainment demonstration is to demonstrate how, through enforceable and approvable emission reductions, an area will meet the standard by the attainment date. All necessary ozone control measures have already been adopted, submitted, approved and implemented. Also discussed in further detail in the proposed rulemaking and based on: (1) The States following the EPA's modeling guidance, (2) the modeled attainment of 1997 standard, (3) the air quality monitoring data for 2014-2016, 2015-2017, 2016-2018, 2017-2019, and (4) the implemented SIP-approved control measures, the EPA is approving the New Jersey and New York attainment demonstrations for the 1997 ozone NAAQS for their portions of the NY-NJ-CT area.

Other specific requirements of an attainment demonstration and the rationale for the EPA's proposed action is explained in more detail in the NPRM. The EPA did not receive any comments during the comment period.

## **III. Final action**

The EPA is approving the attainment demonstration for the New Jersey and New York portions of the NY-NJ-CT nonattainment area for the 1997 ozone NAAQS. This rulemaking addresses

the EPA's obligations to act on New Jersey's January 2, 2018 and New York's November 13, 2017 SIP revision for the 1997 ozone NAAQS.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rulemaking action, pertaining to New York's and New Jersey's 1997 8-hour ozone attainment demonstration submissions is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen Dioxide, Intergovernmental Relations, Ozone, Reporting and recordkeeping requirements, Particulate matter, Volatile Organic Compounds.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: August 27, 2021.

Walter Mugdan,  
*Acting Regional Administrator,*  
*Region 2*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

### **Subpart FF – New Jersey**

2. In §52.1570 the table in paragraph (e) is amended by adding the entry for “1997 8-hour Ozone - Attainment Demonstration” at the end of the table to read as follows:

#### **§52.1570 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

### **EPA-APPROVED NEW JERSEY NONREGULATORY AND QUASI-REGULATORY PROVISIONS**

<b>SIP element</b>	<b>Applicable geographic or nonattainment area</b>	<b>New Jersey submittal date</b>	<b>EPA approval date</b>	<b>Explanation</b>
* * * * *				
1997 8-hour Ozone - Attainment Demonstration	New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone moderate nonattainment area	1/2/2018	<b>[insert date of publication and Federal Register page citation]</b>	<ul style="list-style-type: none"><li>• Full approval.</li><li>• This action addresses the attainment demonstration requirements of the May 4, 2016 SIP Call (81 FR 26697).</li></ul>

3. §52.1582 is amended by adding paragraph (r) to read as follows:

**§52.1582 Control strategy and regulations: Ozone.**

\* \* \* \* \*

(r) The 1997 8-hour ozone attainment demonstration for the New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area included in New Jersey's January 2, 2018 State Implementation Plan revision is approved and satisfies the requirements of section 182 of the Clean Air Act.

**Subpart HH – New York**

4. In §52.1670 the table in paragraph (e) is amended by adding the following entry “1997 8-hour Ozone - Attainment Demonstration” at the end of the table to read as follows:

**§52.1670 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

**EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS**

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
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1997 8-hour Ozone - Attainment Demonstration	New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone moderate nonattainment area	11/13/2017	<b>[insert date of publication and Federal Register page citation]</b>	<ul style="list-style-type: none"> <li>• Full approval.</li> <li>• This action addresses the attainment demonstration requirements of the May 4, 2016 SIP Call (81 FR 26697).</li> </ul>
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5. §52.1683 is amended by adding new paragraph (t) to read as follows:

**§52.1683 Control strategy: Ozone.**

\* \* \* \* \*

(t) The 1997 8-hour ozone attainment demonstration for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area included in New York's November 13, 2017 State Implementation Plan revision is approved and satisfies the requirements of section 182 of the Clean Air Act.

[FR Doc. 2021-18983 Filed: 9/1/2021 8:45 am; Publication Date: 9/2/2021]